IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1518 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIYED SOHEL ALIAS CHIKNA KARIM ALIAS BABU SAIYED

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1518 of 2004

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS ARCHANA RAVAL, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 17-12-2003, by which he is detained under P.A.S.A. Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference of three criminal cases pending against the petitioner. The said cases are registered under Section 379 of I.P.C. and the same are cases of theft committed by the petitioner.

2) Learned advocate for the petitioner submitted that these are all individual cases and it cannot be said that any breach of public order is committed by the petitioner. It is also submitted by the learned advocate for the petitioner that the last incident registered against the petitioner is of 21st March 2003, while the detention order is passed on 17-12-2003, i.e. after almost nine months and therefore, there is a considerable delay in passing the order of detention and on that ground the order of detention is required to be set aside. To substantiate his say, learned advocate for the petitioner has relied upon the judgement of this Court rendered in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad city & Ors. reported in 1997 (1) G.L.H.381.

3) Learned advocate for the petitioner lastly submitted that even though the petitioner is in judicial custody in connection with offence at serial Nos.1 and 2 and even though in case No.3 he was released on bail, he could not furnish amount of solvency. It is also submitted that even though the petitioner is not released on bail by the Magistrate and since he has preferred an application before the Sessions Court, the detaining authority has stated that the petitioner is likely to be released on bail. It is also submitted that there is nothing to show that on what basis the Commissioner has come to the conclusion that the petitioner may be released on bail.

4) Considering the last argument of the learned advocate for the petitioner, it is found that the authority has not clearly stated as to on what basis they have come to the subjective satisfaction that the petitioner may be released, even though one Court has rejected his bail application. Therefore, without considering other arguments about public order as well as delay in passing the detention order, on the aforesaid ground the order of detention is required to be quashed and set aside.

5) Accordingly, this petition is allowed. The order

of detention dated 17-12-2003 is quashed and set aside. The detenu, Saiyed Sohel alias Chikna Karim Alias Babu Saiyed is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

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